1634

SUPREME COURT OF THE UNITED STATES.

No. 210.

THE UNITED STATES, APP'TS,

vs.

FRANCISCO ARCE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"Santa Ysabel."

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FRANCISCO ARCE, claimant,
vs.
THE UNITED STATES, defendant. } For the place named "Santa Ysabel."

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this twenty-second day of September, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Francisco Arce for the place named "Santa Ysabel" was presented and ordered to be filed and docketed with No. 356, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *March* 17*th*, 1853.

In case No. 356, Francisco Arce, for the place named "Santa Ysabel," the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with documents marked H, I, J, No. 1, annexed thereto, was filed.

(*Vide* page 4 of this transcript.)

SAN FRANCISCO, *March* 30*th*, 1853.

In the same case the deposition of Manuel Castro, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(*Vide* page 5 of this transcript.)

4 SAN FRANCISCO, *Sept.* 6*th*, 1853.

Case No. 356 called. The counsel for the claimant read the evidence, argued, and submitted, and taken under advisement.

SAN FRANCISCO, *December* 13, 1854.

In the same case Commissioner Thompson Campbell delivered the opinion of the board rejecting the claim.

(*Vide* page 24 of this transcript.)

5 *Petition.*

To the U. S. board of land commissioners for the ascertaining and settlement of land claims in California:

Your petitioner, Francisco Arce, a citizen and native of California, respectfully showeth:

That he claims to be the owner of the tract of land known as "Santa Ysabel," situated in the county of San Luis Obispo, and bounded and described as follows, to wit: On the north by "San Miguel," on the south by "La Ascension," on the east by the place known as 'La Estrella," and on the west by the range of hills lying to the west of the main road leading from "La Ascension" to San Miguel, containing four square leagues.

That your petitioner claims said land under and by virtue of a grant thereof made to your petitioner on the twelfth day of May, A. D. 1844, by Manuel Micheltorena, then governor of Alta California, and duly empowered to make the same

That on the 13th day of June, A. D. 1846, the said grant was duly confirmed by the departmental assembly of California.

That the said grant and a translation of the same are herewith filed.

That the expediente of said titles, containing the original petitions of your petitioner to Gov. Micheltorena, the reference by the latter, the various reports to him, the diseño of the tract, the decree, and a copy of the grant, are on file in the archives of the former government of California, now in the possession of the surveyor general of the U. S for Cal., and that fac-simile copies of the same, duly
6 certified by them, with translations thereof, are herewith filed.

That a similarly certified copy of the records of the said departmental assembly, showing said approval and a translation of the same, are also herewith filed.

Your petitioner, therefore, prays your honorable board to confirm his said claim and title to said tract of land.

That your petitioner has been in quiet and exclusive possession of said tract of land ever since the date of said grant, and that he knows of no claim conflicting with his own.

CLARK, TAYLOR & BECHK,
Atty's for Pet.

Filed in office Sept. 22nd, 1852.

GEO FISHER, *Sec.*

7 *Deposition of William A. Richardson.*

SAN FRANCISCO, *March 17th*, 1853.

On this day, before Com'r H. J. Thornton, came William A. Richardson, a witness in behalf of the claimant, Francisco Arce, petition No. 356, and was duly sworn, his evidence being given in English.

Questions by claimant.

Quest. 1st. What is your name, age, and place of residence?

Ans. My name is Wm. A. Richardson; my age fifty-eight years; and I reside on my rancho of Saucelito, in Marin county.

Quest. 2d. Look at the document now shown you, purporting to be a grant from Man'l Micheltorena to Francisco Arce of the land named

Santa Ysabel. State what you know in regard to the genuineness of the signatures to said document.

Answer. I am well acquainted with the signatures of Man'l Micheltorena and Man'l Jimeno, having often seen them write; wherever they appear upon said document they are genuine.

WILL'M A. RICHARDSON.

U. S. law agent present.

Sworn to and subscribed before me this 17th March, 1853.

HAR. J. THORNTON, *Comm'r.*

Filed in office March 17, 1853.

GEO. FISHER, *Sec.*

8 *Deposition of Manuel Castro.*

SAN FRANCISCO, *March 30th*, 1853.

On this day, before Com'r Harry J. Thornton, came Manuel Castro, a witness in behalf of the claimant, Francisco Arce, petition No. 356, and was duly sworn, his evidence being interpreted by the secretary.

Questions by claimant.

Quest. 1st. What is your name, age, and place of residence?

Ans. My name is Manuel Castro; my age is thirty-one; and I reside at present in Upper California.

Quest. Are you acquainted with the land claimed in this case, called Santa Ysabel? If yea, state what you know of its occupation.

Ans. I am acquainted with this land. In the year 1845 it was in the possession of claimant, who had servants upon it, and cattle, and cultivated it; and I understood, tho' I do not know, that he lives on it still.

MAN'L CASTRO.

U. S. law agent present.

Sworn to and subscribed before me this 30th of March, 1853.

HARRY J. THORNTON,
Comm'r.

Filed in office March 30th, 1853.

GEO. FISHER, *Secretary.*

9 1843.—Espediente promovido por el ciudadano Franc'o Arce en solicitud del terreno nombrado San Ysabel. 376.

10 Sello cuarto, dos reales. Habilitado provisionalmente por al aduana maritima del puerto de Monterey de en el departamento de las Californias par el año de mil ochocientos cuarenta y tres.

MICHELTORENA. MANUEL CASTANARE.

MONTEREY, *Octr.* 9 *de* 1843.

Infe. el S'rio del despacho o quedo antes á las prefecturas del 1o distrito y cuanto mas jusque necessario.

MICHEL'O.

Exmo. Sor. Gobernador. Franc'o Arce, natural de cete departamente ante la recta justificacion de V. E. con el debido respecto y como mas hay a lugar haga presente que declarando dedicarme al precico ramo de la agricultura y crua de ganado que es de tan vital importancia en este pais, tante por mi utilidad como para el bien pro comunal, solicito del V. E. se digne concederme en propiedad en parage que se halla sumamente baldio en las inmediaciones del establecimento de San Miguel conocido con el nombre de Sta Ysabel en que denuncio en toda forma, colindante al con San Miguel, al sur el parage llamado La Ascencion, al P. con las lomas que se hallan situados al d'ho lado del camino real y al O. con el parage llamado La Estrella, en estencion de cuatro citios de ganado mayor, poco masó menos segun es plica el diceño que debidamente acompaño. Por tanto a V. E. suplico rendidamente aceder à mi peticion de lo que espero recibir gracia.

L. Angeles, Enero 4 de 1843.

FRANC'O ARCE.

Cimo dispone el E. S. Gobernador, pare esta solicitud al Sor Prefecto delt'o distrito para que se sirva informa sobre el contenido de elle y a continuacion derigase el R. P. altro de San Antonio para que se sirva emiter su opinion y evacuado que sea todo vuelva a esta S'ria para cumplir con la prevenido en el superior decreto 11 de f'ha de hoy.

Monterey, 7 de October de 1843.

MAN'L JIMENO.

Sirvase informar á este prefectura el R. P. m'tro de San Antonio sobre el contenido de esta instancia para fecha poder hacerle fundan'te esta prefectura á la S'ria del Superior Gobnr. departamental.

Monterey, O'bre 9 de 1843.

JOSE R. ESTRADA.

Sr. Prefecto del distrito: El terreno pretendido en la presente solicitud es uno de las que en otros yesos sembro la missn. de San Miguel la pertenecente tres mil cepas de viñas que actualmente pide con aguage y postes, y creo seria conveniente de pasear pa la mantencion de las reducidos missiones los ganados é indigeno. Salva sthe al parecer del Sr. Gobernador del departam'to.

San Antonio, 8 de Novbre. de 1843.

S'R JNE DE JESUS MA GUTIERREZ.

Sor. S'rio del Despacho: Don Francicso Arce, pretende en esta instancia sele conceda el terreno nombrado Santa Ysabel colindante como en ella espresa, por el informe del R. P. m'tro de San Antonio, resulto que en dicho terreno existen todavia algunas cepas de viña pertenecientes al establecimiento de San Miguel y aunque S. Ra. da á entender seria conveniente dejar estas plantas y todo el parage que se solicita a favor del mismo establecimiente esta prefectura afin fundada en la verdad de que el espresado sitio de halla valdio sin pro-

ducir de que el referido establecimiento tiene otras terrrenos suficientes y de que las cepas indicadas devimante se estan destinado por su total abandonado se debe preferir a Don Fran'co Arce en la concesion del terreno repetido en atencion de sus servicios y buenas circunstancias ; pues si esta prefectura he dado y a informe al Gobor. en favor
12 de Don Ecequiel Soberanes le hizo par no saber que el Sr. Arce lo tenia solicitude previamente que el. Por lo espuesto V. S. con su costumbrado aciento determinerá lo que cosa de justiciá.

Monterey, December 27, de 1843.

JOSE R. ESTRADA.

Exmo. Sor. Gobernador. La solicitud de Dn. Fran'co Arce tiene un año y por consiguiente es anterior a la del Sor. Narvaez y lá del Señor Soberanes y aunque en el pretencion de este ya hé manifestado las razones para que no pueda alenderse a su solicitud, para en cuanto a las persones y meritos del Sor. Narvaez y el Sor. Arce, como V. E. las conoce bien puede dignarse agraciar al que considero con
14 mejor merito.

Monterey, 2 de Enero de 1844.

MAN'L JIMENO.

MONTEREY, *Mayo 2 de* 1844.

Habiendose conocido los Sros. Arce y Narvaez y teniendo Soberanes otro terreno, hagar levantar una acta y que contiene las terrenos del convenido entro las dos primeros pa. qe. el resultado q. de pueda y a las S'rias, sus necesitad del otro decreto entender los titulos previo avaluo de las viñas a cuyo unponitores quedará responsable en el termino y señala.

MICHELT'A.

Vista la peticion con que da principio este espediente las informe preceden con todo lo demas que se tubo presente y de ver convino, de conformidad con las leyes y reglamentos de la materia declaro á D'n Francisco Arce dueño en propiedad del parage nombrado Santa Ysabel, colindante con el terreno nombrado la ascencion, con el Rio de San Miguel que encedia entra d'ho parage y con las lomerias que nuban al oriente, en estencion de cuatro sitios de ganado mayor, poco mas ó menos. Librese el correspondiente despacho, tomese razon en el libro respectivo y dirigase este espediente á la Ex'ma asamblea departmental para su aprobacion El. J. Sr. D. Manuel Michelt'a, gobernador comand'te general é ynspector del departamento de Califfornas, asi lo mando decretó y firmé de que doy fee.

MICHELT'A.

[Here follows map, marked original, page 15.]

16 [SEAL.] En el punto de Monterey a los diez y seis dias del mes de Marzo de mil ochocientos cuarenta y cuatro en la casa del E. S. Gobernador, command'te general D'n Manuel Micheltorena, se presentaran el capitan de puerto D'n Pedro Narvaez y D'n Francisco Arce para convenirse en las diferencias que resultaran acuento de

haber ambos pretendido un mismo terreno q. habiendose oido las razones y alegatos de uno y otro disputo S. E. y fueran conformes los interesados en dividirlo que dando la parte del paso de Robles pa. el Sor. Narvaez, y el de Sta. Ysabel para el Sor. Arce, ciendo el lindero principal que divide el paraje el Rio de San Miguel, segun demuestran los diceños respectivos, quedando obligados la pretendientes a pagar en lo que se abalue las fineas y otras planitos que en el se encontran, y para la debida constancia firmo S. E. los interesados y el s'rio del despacho.

PEDRO NARVAEZ.
FRAN'CO ARCE.
MICHELT'A.
MANUEL JIMENO, *S'rio.*

El cuid'o Manuel Micheltorena G'ral de Brigada del Ejercito Mejicano ayu'dante g'l de la plana mayor del mismo gobernador comand'te g'ral é ynspector del departamento de Californias.

Por cuanto Don Fran'co Arce ha pretendido para su benificio personal el parage conocido con el nombre de Sta. Ysabel colindante con el terreno nombrado La Ascencion, con el Rio del Miguel, que media entre d'ho paraje y con las lomerias que miran al oriente, prac-
17 ticadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas á nombre de la nacion Mejicano he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras y bajo las condiciones siguientes.

1°. No podrá venderlo enagenarlo no hipotecarlo, un poner censo, vinculo, ni otro gravamen alguno.

2. Podra cercalro sin perjudicar las travesias caminos ni servidumbres ; lo disfrutaran libre y esclusivamente destinando lo al usó ó cultivo que mas le acomode pero dentro de un año á los mas fabricara cara y estara habitada.

3°. Solicitara del juez respectivo que le dé la posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos, en cuyos limites pondrà à mas de las sus mohoneras, algunos arboles frutales ò silvestres de alguna utilidad.

4°. El terreno de que se hace donacion es de cuatro sitios de ganado mayor, poco mas ó menos, segun espuesto en el diseño respectivo. El juez que diere la possession lo hara medir conforme á ordenanza quedando el sobrante q. resulte á la nacion para los usos conveniente.

5°. Si contraviniere á estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que serviendole por titulo el presente, y teniendose por firme y valedero se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado de Monterey a doce de Mayo de mil ochocientos cuarenta y cuatro.

18 Queda tomada razon de este despacho en el libro respectivo á fojas 8 vuelta.

MAN'L MICHELTORENO.

MANUEL JIMENO,
S'rio del Despacho.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States, for the State of California, and as such having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the twelve preceding and hereunto attached pages of tracing paper, numbered from one to twelve, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office; and also that the word "*cuatro*," in the second line from the bottom of the second page, is in the original, recently written on an erasure made by scratching out some word previously written between the words "de" and "sitios."

In testimony whereof, I have hereunto signed my name, officially, and affixed my private seal (not having a seal of office) at [SEAL.] the city of San Francisco, Cal., this 20th day of August 1852.

SAM'L D. KING,
Surveyor General, Cal.

Filed in office Sept. 22nd, 1852.

GEO. FISHER, *Secretary.*

19 1843.

Record of proceedings at the instance of the citizen Franc'o Arce, soliciting the land called Santa Isabel.

376.

"*B.*"—*Translation of espediente and grant.*

EXCELLENT SIR GOVERNOR: I, Franc'o Arce, a native of this department, before your honor, with due respect and as best may tend to the purpose, represent, that, desiring to devote myself to the honorable occupation of agriculture and breed of cattle, which is of so vital an importance in this country, as well for its usefulness to myself as for the public good—

I solicit you to be pleased to grant me the ownership of a location, which is positively vacant, in the environs of the establishment of San Miguel, known by the name of Santa Isabel, which I claim in due form, bordering to the north on San Miguel; to the south on the location called La Ascension; to the west on the highlands, which are situated on the other side of the highway; and to the east of the location called "La Estrella," in extent four square leagues, (sitios de ganado mayor) a little more or less, as is shown in the sketch which I duly annex hereto.

Therefore I pray you humbly to accede to my petition, whereby I expect to receive favor.

Angeles, 4th of January, 1843.

FRANC'O ARCE.

(In the margin.)

Monterey, October 7th, 1843.

20 Let the secretary of state report, hearing beforehand the prefectura of the 1st district, and what else he may deem necessary.

MICHELTORENA.

Agreeably to the order of the excellent S'r governor, let this solicitation be referred to the S'r prefect of the 1st district, that he may please to report upon the contents of it, and consecutively let it be directed to the R. father of San Antonio, that he may please to express his opinion, and, when all finished, let it be returned to this secretary office in compliance with the order in the superior decree of this day's date.

Monterey, 7th October, 1843.

MAN'L JIMENO.

The R. father of San Antonio will please to report to this prefectura upon the contents of this instance, that this prefectura can take the necessary action for the secretary office of the superior departmental government.

Monterey, October 9th, 1843.

JOSE R. ESTRADO.

SIR PREFECT OF THE DISTRICT: The land solicited in the present petition is one of those that formerly were sown by the mission of San Mig'l; there belongs to it three thousand vines, (cepas de viña) which actually exist, with a stream and pastures; and I believe it would be convenient to retain it for the maintainance of the reduced missions; their cattle are inhabitants. Except the superior opinions of the governor of the department.

San Antonio, 7th of Nov., 1843.

21 FR'C'O JOSE DE JESUS MA. GUTIERREZ.

TO THE SECRETARY OF STATE:

Don Franc'o Arce petitions, in this instance, to be granted the land called Santa Isabel, bordered as therein expressed. By the report of the R. father of San Antonio results that thereon said land still exist some vines (cepas de viña) belonging to the establishment of San Miguel, and, through his reverence gives to understand that it would be convenient to retain those plants and the whole location solicited in favor of the same establishment, yet this prefectura is of opinion, founded in truth, that the said site is vacant without produced, of which the said establishment has other lands sufficient; and that the mentioned vines (cepas) are in a state of daily destruction on account of their total abandonment.

Don Franc'o Arce ought to be preferred to the concession of his services and good circumstances, (conduct.) Wherefore, if this prefectura has already given a report to the government in favor of Don

Ecequiel Soberanes, it did so because it did not know that Sr. Arce had solicited before him. From what is represented you will, with your usual discrimination, report what you believe most just.

Monterey, December 27th, 1843.

JOSÉ R. ESTRADO.

22 EXCELLENT SIR GOVERNOR: The solicitation of Don Franc'o Arce is one year old, and consequently is prior to that of Sr. Narvaez, and that of Sr. Soberanes, and though, in the petition of this last one, I have already manifested the reasons why his solicitation should not be attended to, yet, in regard to the persons and merits of S. Narvaez and Sr. Arce, as Y. E. know them well, you can please to favor him whom you shall consider to be most meritorious.

Monterey, 2d of January, 1844.

MANUEL JIMENO.

MONTEREY, *May 2nd*, 1844.

Mess. Arce and Naravez having come to terms, and Soberanes having anoth r land, let there be taken a record in which may be shown the terms of the agreement between the two first parties, in order that from the result it may give, the secretary may now, without the necessity of another decree, make out the title deeds, previously appraising the vines, for the amount of which Arce will remain responsible, on the terms that it designates.

MICHELTORENA.

MONTEREY, *May 12th*, 1844.

Having seen the petition with which this espediente commences, the proceeding reports, with everything else that suggested itself, and was to the purpose, in conformity with the laws and regulations upon the matter, I declare Don Francisco Arce owner in his own right of the location called Santa Ysabel, bordering on the land called
23 La Ascension, on the river of San Miguel, which intersects (or lies between) said location, and on the high lands that lies to the east in extent four square leagues, (sitios de ganado mayor,) a little more or less.

Let the necessary document be made out, enter it in the respective book, and direct this espediente to the E. departmental assembly for its approbation.

Sn. D. Manuel Michelt'a, governor commander general and inspector of the department of both Californias. Thus ordered, decreed and signed, of which I give testimony.

MICHELTORENA.

In the port of Monterey, on the 16th day, in the month of March, 1844, in the house of the governor commander general, Don Manuel Micheltorena, presented themselves, the captain of the port, Don Pedro Narvaez, and D'n Franco Arce, in order to agree on the difference that occurred on reason of having both solicited one and the same land;

and having heard the grounds and allegations of each other, his excellency determined, and the interested parties agreed to divide it, retaining the part of the pass of Robles for Sr. Narvaez, and that of Santa Ysabel for Sr. Arce, the river of San Miguel being the principal boundary which divide the location, as the respective sketches show, the pretenders remaining obliged to pay the amount that may be appraised on the improvements, and other plantations which may be found on it.

24 And for due testimony hereof his excellency, the interested parties, and the secretary of state, set their hands.

MICHELTORENA.

MANUEL JIMENO, *Secretary.*

PEDRO NARVAEZ.

The citizen Manuel Micheltorena, brigadier general in the Mexican army, adjutant general of the plana mayor of the same, governor commander general, and inspector of the department of both Californias:

Whereas Don Francisco Arce has solicited for his personal benefit the location known by the name of Sta Ysabel, bordering on the land called La Ascencion, on the river of San Miguel, which intersects (lies between) said location, and on the high lands that lies (look) to the east, after having previously taken the necessary action and made the necessary investigations according to the requirements of laws and regulations, in exercise of the powers vested in me in the name of the Mexican nation, I have concluded to grant him the said land, declaring it his property, by the present letters patent, and under the following conditions:

1st. He shall not have the power to sell, alienate or mortgage it, nor to subject it to rent, entail, or any other incumbrance.

2nd. He may fence it, without prejudiceing the crossings, roads or servitudes; he will enjoy it freely and exclusively, appropriating it to the use or culture that best may suit him, but within one year at most he will build a house to be inhabited.

25 3. He will solicit of the respective judge to give him juridical possession in virtue of this document, by whom the boundaries are to be marked out, on the extremities of which he will put, besides the landmarks, some fruit trees or wild ones of some utility.

4. The land granted is four square leagues, (sitios de ganado mayor,) a little more or less. as the respective sketch shows.

The judge who shall give the possession will cause it to be measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

5. If he should violate these conditions he will lose his right to the land, and may be denounced by another party.

Consequently I order that these presents, serving him as a title deed and being held as firm and valid, it be entered in the respective book and delivered to the interested party for his security and other purposes.

Given in Monterey on the 12th May, 1844.

This document has been entered in the respective book at fol. 8, reverse.

MANUEL MICHELTORENA.
MANUEL JIMENO,
Secretary of State.

Filed in office Sept. 22nd, 1853.

GEO. FISHER,
Sec'y.

26 Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el departamento de los Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

[SEAL.]

MICHELTORENA.

El ciudadano Manuel Micheltorena, general de bregada del egercito Mejicana ajudante general de la plana mayor del mismo, gobernador comandante general é ynspector del departamento de los Californias.

Por cuanto D. Francisco Arce, ha pretendido por su beneficio personal y el de su familia el parage conocido con el nombre de Sta. Ysabel colindante con el terreno nombrado La Ascension, con el Rio de San Miguel que media entre d'ho paraje y con los lomerias que nieran al oriente practicadas previamente las deligencias y averiguaciones concernientes segun lo dispuesto por leges y reglamentos, usando de las facultades que me son conferidas a nombre de la nacion Mejicano ha venido en concederle el terreno mencionado sujetandose a la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1o. No podran venderló enagenalio ni hipotecarló sin poner censo vinculo fianza ni otro gravamen alguno.

2o. Podra cercarlo sin perjudicar las travesias caminos y servidumbres lo disfrutaran libre y esclusivamente destinandolo al uso o cultivo que mas le acomode peró dentro de un uño fabricará casa y estará habitada.

27 3o. Solicitara del juez respectivo que le dé la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra ó mas de las mojoneras algunas arboles frutales ó silvestres de alguna utilidad.

4o. El terreno de que se hace donacion es de cuatro sitios de ganado mayor pocó mas ó menós segun esplica el diceño respectivo, el juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5o. Si contraviniere a estos condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que serviendole de titulo el presente y teniendose por forme y valedero se tome razon en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey a doce de Mayo de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'O.

MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro respectivo a fojas 8 vuelta.

JIMENO.

Filed in office March 17th, 1853.

GEO. FISHER, *Secretary.*

28 Asamblea departa'o de California.

De orden de la ex'ma asamblea departamental paso á manos de V. S. para el superior conocimiento del ex'mo s'or gobernador, tres titulos de terrenos conocidos, al norte de este depart'to por el gobierno del mismo en favor de los S'ores Dn. Guillermo Gulnak, comand'te de escuadron, Dn. Andres Pico y Dn. Fran'co Arce, relativos el primero su f'ha 13 de Enero de 1844, a once sitios de ganado mayor en el puerto llamado campo de los Franceses el segundo f'ha 5 de Junio pp'do igual'te de once sitios de ganado mayor en el Rio de los Moquelames y el tercero de seis sitios la Sta. Yrabel, cuyos tres titulos, que tanto reconocido el pronto despacho de ellos S. E. el s'or gobernador, fueron aprobados, conforme á la ley de la materia, en sesion de hoy por este honorable cuerpo á que tengo el honor de pertenecer como disputado secretario.

Y cumplicado con aquella superior decreto disposicion lo dige a V. S. pa. el fin indicado, protestandole á la vez las mas distinguidas consideraciones de mi particular ofrecio.

Dios y libertad. Sala de sesiones en Los Angeles á 15 de Julio de 1846.

NARCISSO BOTELLO,
Dep. Secr't.

S'or secre'to del despacho del gobierno de este departamento Dn. José Matias Moreno.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

29 I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican Territory, department of Upper California, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered one and two, and each of which is verified by my initials, (S. D. K.,) exhibit a true and accurate copy of a document on file and forming part of the said archives in this office.

1649

In testimony whereof I have hereunto set my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 23d day of June, 1852.

SAM'L D. KING,
Surveyor General Cal'a.

Filed in office Sept. 23, 1852.

GEO. FISHER, *Secretary.*

30 D.—*Translation of grant, and approval.*

The citizen Manuel Micheltorena, brigadier general in the Mexican army, adjutant general of the plana mayor on the same, [SEAL.] governor commander general, and inspector of the department of both Californias :

Whereas Don Francisco Arce has claimed for his personal benefit, and that of his family, the location known by the name of Sta. Ysabel, bordering upon the tract of land called La Ascencion, on the river of San Miguel, which runs in the middle of said location, and on the high lands fronting to the east; after having previously taken the necessary action, and made the necessary investigations, according to the requirements of law and regulations, in exercise of the powers vested in me, in the name of the Mexican nation I have concluded to grant him the land mentioned, subject to the approbation of the excellent departmental assembly, and under the following conditions:

1st. He shall not have the power to sell, alienate, or mortgage it, nor subject it to rent, entail, bond, or any other encumbrance.

2d. He may fence it without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use or culture that best may suit him, but within a year he shall build a house to be inhabited.

3d. He will solicit of the respective judge to give him juridical possession in virtue of this document, by whom the boundaries are to be marked, on the extremities of which he will put, besides the landmarks, some fruit trees or wild ones of some utility.

31 4th. The land granted is four square leagues, (sitios de ganado mayor,) a little more or less, as is exhibited in the respective sketch; the judge who shall give the possession will cause it to be measured conformably to ordinance, leaving the surplus that may result to the nation for convenient purposes.

5th. If he should violate these conditions he will lose his right to the land, and may be denounced by another party.

Consequently, I order that these presents, serving him as a title deed, and being held as firm and valid, it be entered in the respective book, and delivered to the interested party for his security and other purposes.

Given in Monterey on the twelfth day of May, eighteen hundred forty-four.

(Signed) MANUEL MICHELTORENA.
MAN'L JIMENO, *Secretary.*

This document has been entered in the respective book, on folio 8th, reverse.

JIMENO.

Departmental assembly of California.

By order of the excellent departmental assembly I convey in your hands, for the superior information of the excellent s'r governor, three title deeds of land granted in north of this department by the government of the same in favor of the gentleman Dn. Guillermo
32 Gulnak, commander of squadron, Don Andres Pico and Don Fran'co Arce, relative; the first of date 13th January, 1844, to eleven square leagues in the point called Campo de Los Frances; the second of date 5th June last, likewise to eleven square leagues on the river of Los Moquelumne; and the third to six square leagues in Sta. Ysabel; which three title deeds, of which I at the same time recommend the speedy despatch of his excellency the governor, were approved conformable to the laws on the matter, in session of to-day, by this honorable body, to which I have the honor to belong as deputy secretary.

And that superior order accomplished, I communicate it to you for the aforesaid purpose, assuring you at the same time of the most distinguished considerations of my particular esteem.

God and liberty. The hall of sessions in Los Angeles, 15th of July, 1846.

NARCISO BOTELLO,
Deputy Secretary.

To the secretary of state of this government.

DON JOSÉ MATIAS MORENO.

Filed in office Sept. 22nd, 1852.

GEO. FISHER, *Sec'y.*

33 *Opinion.*

FRANCISCO ARCE *vs.* THE UNITED STATES. } Santa Ysabel.—4 leagues.

The petition in this claim by virtue of a grant issued by Governor Micheltorena, and bearing date the 12th day of May, A. D. 1844. The papers on file show that said grant was approved by the departmental assembly, on the 15th day of July, A. D 1846. The signatures of Governor Micheltorena and Manuel Jimeno are both proved to be in their handwriting. It is proved by the deposition of Manuel Castro that the place called Santa Ysabel was, in the year 1845, in the possession of the claimant, who had servants and cattle upon it, and cultivated it. This is all the evidence in regard to the inhabitancy of the land adduced by the claimant. There is no proof that any judicial measurement was ever made of the premises. The grant has all the usual conditions; one of which requires that he shall build a house within a year, and that it shall be inhabited.

The proof does not show anything from which a compliance of this condition could be inferred.

He had servants, it seems, on the place, but there is nothing to show that he ever lived there himself; indeed, the contrary is plainly indicated. Besides the grant is for a specific quantity of land, to be located within certain exterior boundaries referred to in the grant and designated on the map which accompanies the claimant's
34 petition to the governor. The party was required to apply to the proper officer for the judicial measurement of the four leagues granted him, and the judge who might make the measurement was enjoined to leave the surplus to the nation. It does not appear that the party in interest ever made any such application for judicial possession or measurement; neither does it appear that any measurement was ever made during the existence of the Mexican government. We have so repeatedly expressed our views on this question that we deem it only necessary in the present instance to state the facts and announce the conclusion.

It is clear, then, that no segregation of the four leagues granted was ever made by authority of the Mexican government, and this commission has no power to make it now. The claim in this case, as well for want of equity in the performance of conditions as for want of identity and location, is deemed to be invalid.

A decree in conformity with the opinion will be entered.

Filed in office Dec. 13th, 1853.

GEO. FISHER, *Secretary*.

35 *Decree*.

FRANCISCO ARCE
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and his application for confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Dec'r 13th, 1853.

GEO. FISHER, *Secretary*.

36 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-six pages, numbered from 1 to 26, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 356, on

the docket of the said board, wherein Francisco Arce is the claimant against the United States, for the place known by the name of Santa Ysabel.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-second day of August, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Secretary.*

Filed August 26th, 1854.

A. S. TAYLOR, *Dp. C'lk.*

37 *Notice of appeal.*

On appeal from the board of U. S. land commissioners.
Case No. 356. In the southern district.

SIR: Please to take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully,

CAMPBELL, TAYLOR & BECKH,
Att'ys for claimant.

San Francisco, Dec. 8th, 1854.

To the clerk of the U. S. district court, southern district of California.

Filed Dec. 12, 1854.

C. E. CARR, *Cl'k.*

39 *Petition for review.*

FRANCISCO ARCE
vs.
THE UNITED STATES. } No. 42.—Com's docket, 356.

The petition of Francisco Arce respectfully showeth that this cause is an appeal from the decision of the board of U. S. commissioners for the ascertainment of private land claims in California; that the claim filed by your petitioner before said board was for four leagues of land in the county of San Louis Obispo, viz: in the southern district of California, for a description of which land and your petitioner's title thereto reference is hereby specially made to the petition filed before said board; that after considering your petitioner's claim and the proofs filed in support of the same, said board, on the 13th of Dec., 1853, decided that said claim was invalid; that a transcript of the record of said proceedings was filed in this court on the 26th of August, 1854, and a notice of appeal filed by claimant on the 12th of Dec., 1854. Your petitioner prays that said decision of said board may be reversed, and that this court may confirm his title to said land.

To the hon. the district court of the United States for the southern district of California.

J. CLARK,
Att'y for claimant.

Filed Sept. 19th, 1855.

J. E. CARR, *Cl'k.*

41 *Summons.*

UNITED STATES OF AMERICA,
Southern District of California, ss:

The President of the United States to Pacificus Ord, attorney of the United States for the southern district of California, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against you in the district court of the United States in and for the southern district of California, on the nineteenth day of September, in the year of our Lord one thousand eight hundred and fifty-5, at the city and county of Los Angeles, in said district, by Francisco Arce, praying the said court to review the decision of the board of U. S. land commissioners for the State of California for a tract of land in the county of Santa Barbara, which claim was rejected by said board of land comm's on the 13th day of Dec., A. D. 1854, and that you are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days, if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the plaintiff will apply to the court for the relief demanded therein.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court this 19th day of September, in the year of our Lord one thousand eight hundred and fifty-five, at Los Angeles aforesaid.

C. E. CARR, *Cl'k,*
By JOHN W. ROSS, *Dep'ty.*

42 Received Sept. 28th, 1855.

EDWARD HUNTER,
U. S. Marshal.

I served this summons, along with the proper copy of the petition, upon P. Ord, U. S. dist. att'y, by leaving with him, personally, a true copy of the same, at the city of Los Angeles, in the southern district of California, on the 21st day of September, A. D. 1855.

E. HUNTER, *U. S. Marshal,*
By R. T. JONES, *Dep'ty.*

Sworn to and subscribed before me this 21st Sept., A. D. 1855.
C. E. CARR, *Clerk.*

43 *Answer.*

In the district court of the United States for the southern district of California, Hon. Isaac S. K. Ogier, judge.

FRANCISCO ARCE
vs.
THE UNITED STATES. } No. 42.—Transcript No. 356.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States,

to the petition for review of claimant, Francisco Arce, in the above entitled cause, says: That he denies, generally, all and singular each and every allegation in the said petition contained, and the said United States, respondent, denies the validity of the alleged claim or title of the said petitioner; and said respondent prays that this hon'le court will affirm the decision of the board of United States land commissioners for the State of California, and decide the said alleged title or claim of said Francisco Arce to be invalid and general relief.

P. ORD, *Attorney of the United States for the Southern District of California.*

Filed Sept. 21st, 1855.

C. E. CARR, *Clk*,
By JOHN W. ROSS, *Dep'ty.*

45 *Motion and affidavit for continuance.*

District court of the United States, southern district of California.—December term, 1855.

THE UNITED STATES, appellee,
vs.
FRANCISCO ARCE, appellant. } No. 42.

The appellant moves for an order continuing the above-entitled cause, and in support of his motion refers to the annexed affidavit.

By his att'ys, HALLECK, PEACHY & BILLINGS.

Frederick Billings, on his oath, says that he is of the law firm of Halleck, Peachy and Billings, of San Francisco; that just previous to the departure of this affiant from San Francisco to attend the present term of the U. S. court in Los Angeles, his firm was employed by Francisco Arce, who lives, as this affiant is informed and believes, in the county of Santa Clara, to attend to his claim against the United States for the ranch of Santa Ysabel, which was rejected by the land commissioners, and is now pending in this court; that it appears that issue was joined in this case by the filing of the answer on the 21st day of September last; that notice of appeal and the petition for review were filed by Jeremiah Clarke, esq., of San Francisco, who was one of the att'ys of said Arce in the prosecution of his claim before the land commission; that, as this affiant is informed and believes,

46 the said Arce, at the time he employed this affiant's firm to attend to this case, was wholly ignorant, either through some difficulty or misunderstanding, or from some other cause existing between him and said Clarke, of what, if any, steps had been taken in said cause in this court; that said Clarke would not or was not any longer to represent said Arce therein, and that therefore the said Arce retained this affiant's firm.

This affiant further says that the said cause is not ready for trial; that further proof of occupation and cultivation of the ranch by claimant, from the year in which the grant was made to the present time, is necessary—proof that a house was built on the rancho, inhabited,

and land cultivated, within a year from the date of the grant; and that the claimant has had stock and employees on the ranch all the time, from within a year of the date of the grant to the present time; further, that proof is wanting to show clearly the identity of the land and its susceptibility of segregation, according to the calls of the grant and the map of the espediente. And the affiant states that he is informed and believes that all of the proof needed, unless it be with reference to the single matter of building a house within the year, can be obtained, but that the claimant is not here, the land is in San Luis Obispo county, and the names of the witnesses to prove these facts are not known to this affiant. Further, this affiant states that under the circumstances of the case, as far as they are known at the time of the employment of this affiant's firm, it was not supposed that the presence of said Arce at this term of the court was
47 either necessary or advisable; further, that it was a surprise to this affiant that this cause was on the calendar.

FREDERICK BILLINGS.

Subscribed and sworn to this 31st day of December, A. D. 1855, before me.

C. E. CARR, *Cl'k.*

Filed Dec. 31st, 1855.

C. E. CARR, *Cl'k.*

Order to take testimony.

THE UNITED STATES, appellee,
vs.
FRANCISCO ARCE, appellant. } No. 42.

U. S. district court, southern district of California.—In court, Dec. 31st, 1855.

And now the appellant, appearing by his att'ys, Halleck, Peachy & Billings, and the United States, appellee, by the district attorney, P. Ord, esq., on motion of the attorneys of appellant it is ordered that either party be allowed to take such further testimony and evidence in the above cause as they may wish.

Filed Dec. 31st, 1855.

C. E. CARR, *Cl'k.*

49 *Deposition of M. Bonilla.*

Deposition of Mariano Bonilla, a witness on the part of the claimant and appellee, taken before C. Sims, United States commissioner for the dist. of California, at the office of the United States dist. clerk for the southern district of California, in the city of Los Angeles, on Saturday the 10th day of January, A. D. 1857, at 3 o'clock p. m., by the consent and at the request of the respective parties (attorney of the) to be used as testimony on behalf of the appellant and claimant in a certain cause now proceeding in the United States district court

for the southern dist. of California, being case No. 42 on the docket of said court, wherein Francisco Arce is appellant and claimant and the United States are appellees.

Present: P. Ord, U. S. att'y, on behalf of the appellee, and Halleck, Peachy and Billings, esq's, attorneys on behalf of theappellant and claimant.

FRANCISCO ARCE, appl't, *vs.* THE UNITED STATES, app'ee. } No. 42.—Santa Ysabel, in S. Luis Obispo.

Mariano Bonilla, being duly sworn on the part of the appellant, answers as follows:

Quest. What is your name, age, and place of residence?

Ans. My name is Mariano Bonilla; am 51 years of age; and reside in the county of San Luis Obispo.

Quest. Do you know the rancho called Santa Ysabel, in San Luis Obispo county, claimed by Francisco Arce? If yea, state particularly how long and how well you have known it.

50 Ans. I know it, and have known the same since the year 1837. I know it perfectly well, because I have been all over the land, and have lived within two leagues of the land, and I have been the administrador of San Miguel, and there was a vineyard that belonged to San Ysabel, being a part of what was formerly the mission of San Miguel. I have known it since 1837 to the present time, continuously and without interruption.

Quest. Do you know the place or tract of land called "La Ascencion," in San Luis Obispo county? If yea, how long have you known it; how does it lie with reference to Santa Ysabel?

Ans. I know the land as well as I do that of San Ysabel, because I have been the owner of "La Ascencion;" and with reference to Santa Ysabel, it lies on the south of and adjoining Santa Ysabel.

Quest. Is "La Ascencion" a well known tract of land, and is the boundary line between it and Santa Ysabel well known and easily distinguished?

Ans. It is land well marked, and the line between it and Santa Ysabel is well known and well defined by a range of hills.

Quest. How does the river San Miguel run with reference to "La Ascencion, and also with reference to San Ysabel."

Ans. It runs through the middle of the land of "La Ascension." It is the boundary line of Santa Ysabel on the west side, but it runs in a meandering course.

Quest. Are there hills on the east of Santa Ysabel? If yea, are they well known and easily distinguished?

51 Ans. These are, and they are well known and easily distinguished, and extend back a great way.

Cross-examined by P. Ord, U. S. att'y.

Quest. Are you directly or indirectly interested in the land claimed herein.

Ans. Absolutely I have none whatever.

J. MAR'NO BONILLA.

Sworn to and subscribed to before me this 10th day of January, A. D. 1857.

C. SIMS, *Cl'k.*

UNITED STATES OF AMERICA,
Southern District of California:

I, C. Sims, United States commissioner for the district of California, do hereby certify that the foregoing deposition of Mariano Bonilla was taken before me in accordance to the request and agreement of the said attorneys, at the office of the clerk of the United States district court for the southern dist. of California, in the city of Los Angeles and State of California; that the said Mariano Bonilla was by me duly sworn according to law as a witness in said cause in the caption to this deposition mentioned, and after being so sworn his testimony was by me reduced to writing in his presence and that of the said attorneys, and after having been by me carefully read to him, and by him corrected as he desired, was by him signed in my presence.

In testimony whereof, I hereunto set my hand and seal this 10th day of January, A. D. 1857.

[SEAL.]

C. SIMS,
U. S. Comm'r.

Filed Jan'y 10th, 1859.

C. SIMS, *Cl'k.*

52 *Decree.*

In the district court of the United States within and for the southern district of California, Hon. Isaac S. K. Ogier, judge, December term, A. D. 1856.

THE UNITED STATES, appe'lee,
vs.
FRANCISCO ARCE, appellant. } No 42.

Transcript from the board of land commissioners, No. 356.

This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in California, upon the transcript of the proceedings and decision of said board, and the documentary and other evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is order, adjudged, and decreed that the decision of said board of land commissioners rejecting the claim of the above-named appellant, Francisco Arce, to the lands set forth and subscribed in his petition to the said board of land commissioners, and in the documentary and other evidence filed in this case, be, and the same is hereby, reversed. And it is further ordered, adjudged, and decreed that the title of the said Francisco Arce, the above-named appellee, to the said land is a good and valid one, and that his claim to the said land be, and the same is hereby, confirmed.

The land of which confirmation is hereby made is in quantity of four square leagues, and no more; is situated in the county of San Luis Obispo, and is known by the name of "Santa Ysabel,"
52 being the same granted on the 12th day of May, 1844, by Manuel Micheltorena to the said Francisco Arce, to be located within the following boundaries, viz: "La Asuncion," the San Miguel river, and on the east by the hills, (lomerias,) according to the documents of title and map to which reference is had. If the quantity of land within said boundaries is less than four square leagues, then the confirmation hereby made is made to the whole tract; but if the quantity within said boundaries exceeds four square leagues, then the confirmation hereby made is made to the quantity of four square leagues, and no more.

ISAAC S. K. OGIER,
U. S. Judge for the Southern District of Cal'a.

Filed Jan'y 13th, 1857.

C. SIMS, *Cl'k.*

54 *Appeal.*

United States district court south'n dist. Cal'a.—December term, A. D. 1856.—Feb'y 24th, A. D. 1857.

FRANCISCO ARCE
vs.
THE UNITED STATES. } No. 42.

On motion of P. Ord, U. S. dist. att'y, it is ordered that an appeal be allowed the United States herein.

55 *New appeal.*

United States district court southern district of Cal'a.—December term, A. D. 1861.—December 9th, A. D. 1861.

FRANCISCO ARCE, app'lee,
vs.
THE UNITED STATES, appl't. } No. 42, D. C., No. 356, L. C.—"Santa Ysabel."

And now comes J. R. Gitchell, esq., appointed at the request of the court to act in behalf of the U. S., (there being no U. S. att'y present,) and move the court that a new appeal be allowed the United States in this case to the Supreme Court of the United States, from the order and decree of this court heretofore rendered.

Which motion, being heard by the court and understood, is granted.

56 United States district court southern district of California.

CLERK'S OFFICE, *Monterey, Cal'a.*

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing fifty-five pages, numbered from one to 55, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, of the documentary evidence and of the testimony of the witnesses upon which the same was founded, on file in my office, in case No. 42 on the docket of the said court, wherein Francisco Arce, is the claimant against the United States for the place named "Santa Ysabel."

In witness whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Monterey, Cal'a, this the 15th day of April, A. D. 1862.

JOHN O. WHEELER,
Cl'k U. S. Court, South. Dist. Cal'a.

Filed September 20, 1862.